

MINUTE ENTRY

9:00 a.m.

UNITED STATES OF AMERICA -v- EDWARD M. FLEMING

PRESENT: HON. ALEX R. MUNSON, Chief Judge Presiding
SANAE N. SHMULL, Official Court Reporter
K. LYNN LEMIEUX, Courtroom Deputy
JAMIE BOWERS, Assistant U. S. Attorney
BRUCE BERLINE, Counsel for Defendant
EDWARD M. FLEMING, Defendant

PROCEEDING: SENTENCING

Defendant was present with his court appointed counsel, Attorney Bruce Berline. Government by Jamie Bowers, AUSA. Also present was U.S. Probation Officer, Margarita Wonenberg.

No objection by the government of the presentence report. Counsel for defendant had some corrections to the report. Court so noted.

Court adopted the presentence investigation report and instructed the Clerk to file the report, under seal, and that the report be made available if the judgment is appealed. The probation officer's recommendation shall also be placed under seal. No objection by the parties.

Government recommended 16 months imprisonment. Defense recommended the lowest end of the sentencing guidelines and ask that he be sentenced to 10 months but no more than 13 month and that one-half of the sentence to be served in home confinement. Further, if he is confined in a federal facility that he serve his time at FBC Nellis at the Nellis Air Force base in California.

SENTENCE: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant EDWARD MENDIOLA FLEMING is hereby sentenced to a term of imprisonment of 6 $\frac{1}{2}$ months imprisonment with credit for time served. Following sentencing, the defendant shall be placed on supervised release for a period of two years. The term of supervised release will include the following conditions:

1. That the defendant shall serve six and $\frac{1}{2}$ months home confinement under the home detention component and shall abide by all the requirements of the program which will include electronic monitoring or other location verification system. The defendant shall pay all or part of the costs of the program based upon his ability to pay as determined by the probation officer. During the period of home detention, the defendant shall be restricted to his residence at all times except for employment, education, religious services, medical, substance abuse or mental health treatment, attorney visits, court appearances, court ordered obligations, or other activities pre-approved by the probation officer;
2. That the defendant shall not commit another federal, state or local crime;
3. That the defendant shall not use or possess illegal controlled substances and shall submit to one (1) urinalysis within 15 days of release from custody and, to two more urinalysis thereafter;
4. That the defendant shall comply with the standard conditions of supervised release as set forth by the U. S. Sentencing Commission;

5. That the defendant shall be prohibited from possessing a firearm or other dangerous weapon or have such at his residence;
6. That the defendant shall participate in a program approved by the U.S. Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol. The defendant shall also make co-payment for the program at a rate to be determined by the U.S. Probation Office;
7. That the defendant shall be employed or seek employment;
8. The defendant shall perform 200 hours of community service under the direction of the U.S. Probation Office.

Court ordered that the defendant pay a \$100.00 assessment fee. All fines were waived.

Attorney Berline moved that the condition of drug testing be removed from the conditions of supervised release. Government opposed the motion. Court denied the motion.

No objection to the sentence by the attorneys. Defendant was advised of his right to appeal the sentence; if he or his attorney feel that there is a reason to appeal they must do so within 10 days. Further, the defendant was advised of his right to an attorney for appeal.

Court ordered that the defendant remain at liberty under the same conditions as previously set and that he check in with the U.S. Marshal on Monday, Wednesday and Friday until a facility has been designated and that he is ordered to report as soon as he is instructed by the U.S. Marshal.

Adj. 10:00 a.m.

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Applies to: DFT Fleming, Edward Mendiola [KLL EOD 12/28/2004]